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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,026	09/25/2003	Byron Ritchey	101073.0001US1	9535
34284	7590	09/23/2004	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/673,026

Applicant(s)

RITCHEY, BYRON

Examiner

Tania C. Courson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12DEC03</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration, filed on March 16, 2004, remains defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s):

- a) claim 8, lines 1-2, "a tennis racket"
- b) claim 10, lines 1-2, "disengaging a holding element";

No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5-7 and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by St. Jeor (US 6,626,293).

St. Jeor discloses in Figures 2a, 2b and 3, a golf club reminder device and associated method comprising:

With respect to claims 1-3 and 5-7:

- a) an upwardly biased mechanism that is actuated during removal of the sporting good (Fig. 2a, biasing element 16);
- b) wherein the upwardly biased mechanism is coupled to a visual indicator (Fig. 2a, indicia bearing medium 20);
- c) wherein the visual indicator is a flag (Fig. 3);
- d) wherein the upwardly biased mechanism comprises a spring (Fig. 2a, biasing element 16);
- e) wherein the spring is compressed by a weight of the sporting good (Fig. 2b), and;
- f) wherein the sporting good is a golf club (Fig. 2b, golf club 18).

With respect to method claims 9-10:

- a) providing an upwardly biased mechanism in mechanical relationship with an absence indicator (Fig. 2b), actuating the upwardly biased mechanism as a function of removal of the sporting good and raising the absence indicator (Fig. 3);
- b) further comprises disengaging a holding element (Fig. 2b).

5. Claims 1-2, 4-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Very (US 4,746,014).

Very discloses in Figures 1-4, an implement holding device and associated method comprising:

With respect to claims 1-2 and 4-7:

- a) an upwardly biased mechanism that is actuated during removal of the sporting good (Fig. 1, spring 3);
- b) wherein the upwardly biased mechanism is coupled to a visual indicator (Fig. 1, tube 1);
- c) wherein the visual indicator is the sleeve (Fig. 1, tube 1);
- d) wherein the upwardly biased mechanism comprises a spring (Fig. 1, spring 3);
- e) wherein the spring is compressed by a weight of the sporting good (Fig. 2);
- f) wherein the sporting good is a golf club (Fig. 2, club 6).

With respect to method claims 9-10:

- a) providing an upwardly biased mechanism in mechanical relationship with an absence indicator (Fig. 2), actuating the upwardly biased mechanism as a function of removal of the sporting good and raising the absence indicator (Fig. 1);
- b) further comprises disengaging a holding element (Fig. 2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2, 5-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smeller (US 4,947,998) in view of Takagai et al (US 4,531,116).

Smeller discloses an implement holding device and associated method including the following:

With respect to claims 1 and 8:

- a) a mechanism for holding a sporting good (Fig. 1, nest 3)
- b) wherein the sporting good is a tennis racket (Fig. 1).

Smeller does not disclose an upwardly biased mechanism that is actuated during removal of a sporting good, wherein the upwardly biased mechanism is coupled to a visual indicator,

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wherein the upwardly biased mechanism comprises a spring, wherein the spring is compressed by a weight of the sporting good, providing an upwardly biased mechanism in mechanical relationship with an absence indicator, actuating the upwardly biased mechanism as a function of removal of the sporting good and raising the absence indicator and further comprises disengaging a holding element.

Very teaches an implement holding device and associated method that consists of an upwardly biased mechanism that is actuated during removal of a sporting good (Fig. 1, spring 3), wherein the upwardly biased mechanism is coupled to a visual indicator (Fig. 1, tube 1), wherein the upwardly biased mechanism comprises a spring (Fig. 1, spring 3), wherein the spring is compressed by a weight of the sporting good (Fig. 2), providing an upwardly biased mechanism in mechanical relationship with an absence indicator (Fig. 2), actuating the upwardly biased mechanism as a function of removal of the sporting good and raising the absence indicator (Fig. 1) and further comprises disengaging a holding element (Fig. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the implement holding device and associated method of Smeller, so as to include an upwardly biased mechanism that is actuated during removal of a sporting good, as taught by Very, so as to provide a means for increasing visibility of the removal of a sporting good during use of the device.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The prior art cited on PTO-892 and not mentioned above disclose a holding device:

Flis (US 5,950,823)

O'Sullivan (US 5,398,927)

Quellais et al. (US 4,967,904)

Takagi et al. (US 4,531,116)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR



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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
September 17, 2004

  
G. BRADLEY BENNETT  
PRIMARY EXAMINER  
A V 2859